IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 326 OF 2005

IN

SUIT NO. 1635 OF 2004

Kutub Badruddinbhai
Dhariwala .. Plaintiff.

vs.

Ahmed Oomerbhoy & Ors. .. Defendants.

Mr. P.N. Ganwani i/by Zohair & Co.
for the plaintiff.
Mr. Sunil Periera i/by Legal Asso.
for defendant no. 7.
Mr. A.N. Maniyar for defendant no. 3.

CORAM : S.U.KAMDAR, J.

DATE : 23rd January,2006.

P.C.

. In this matter,the defendant company is dissolved and the suit for dissolution and account is pending. The court receiver, High Court, Bombay, was appointed as receiver. All the creditors have filed their claims before this Court and by an order passed by this Court a Chartered Accountant was appointed for scrutinizing each of the claim. In

the case of the plaintiff the Chartered Accountant has made an observation that the claim is not payable because from the record it is not found that the requisition is approved by the parties to the suit and, therefore, he has recommended that no payment should be made though the ledger account tallies. In the light of the observation of the Chartered Accountant in his report which has been prepared pursuant to the order passed by this Court, it is not possible to make payment at this stage unless the matter is finally considered and the accounts of the said partnership firm are taken and the matter is resolved. In my opinion, triable issues arise in the present case whether the amount is payable or not and accordingly unconditional leave is granted. Summons for judgment disposed of accordingly.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.